



**CITY OF SUNNYVALE
REPORT
Administrative Hearing**

April 12, 2006

SUBJECT: **2006-0269** – Application for a on a 5,775 square foot site located at **1386 Torrance Ave** (near Wildwood Ave) in an R-3 (Medium-Density Residential) Zoning District.

Motion Variance from Sunnyvale Municipal Code section 19.48.020 to allow a five-foot six-inch fence in Driveway Vision Triangle.

REPORT IN BRIEF

Existing Site Conditions Existing one-story residence

Surrounding Land Uses

North Single-Family Residential

South Single-Family Residential

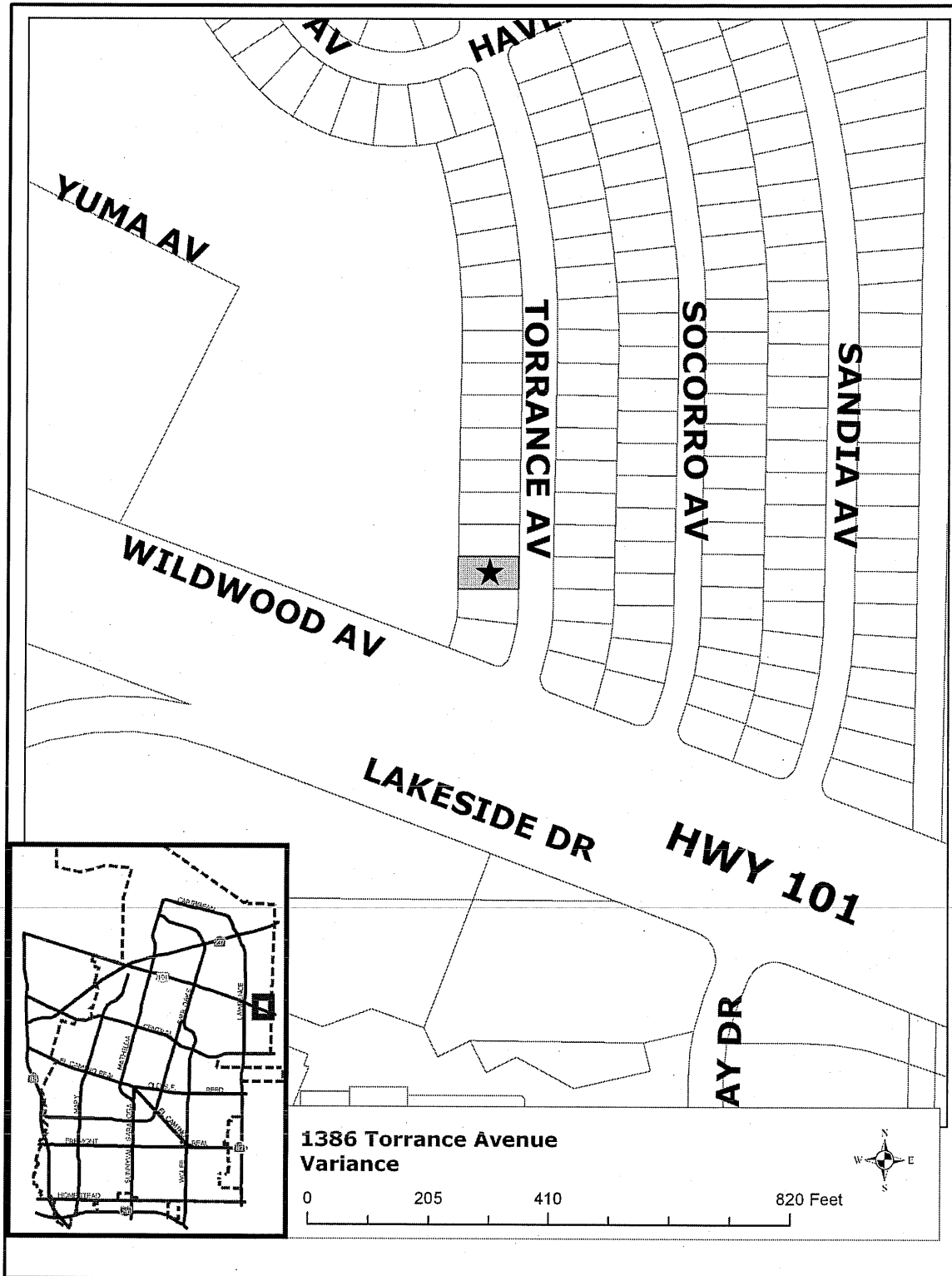
East Single-Family Residential

West Single-Family Residential

Issues Justifications for a Variance

Environmental Status A Class 1 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines.

Staff Recommendation Deny Variance



PROJECT DATA TABLE

	<u>EXISTING</u>	<u>PROPOSED</u>	<u>REQUIRED/ PERMITTED</u>
General Plan	Residential Low Density	Same	Residential Low Density
Zoning District	R-0	R-0	R-0
Lot Size (s.f.)	5,775	Same	6,000 min.
No. of Buildings On-Site	1	Same	---
No. of Stories	1	Same	2 max.
Fence Height (Design Guideline)	5'6"	Same	3 max.

★ ★ Starred items indicate variance from Sunnyvale Municipal Code requirements.

ANALYSIS**Description of Proposed Project**

The applicant has an existing, unpermitted 5-foot 6-inch fence in the required front yard, located along the front property line. The first 3-feet of the split-level fence are stone, and the remaining 2-feet 6-inches is wrought iron.

The applicant has applied for a Variance to allow the existing fence to be located in the Driveway Vision Triangle (SMC 19.12.050.D).

The application also requires a Miscellaneous Plan Permit (MPP), which is a discretionary review, to meet Sunnyvale Municipal Code (SMC) requirement 19.48.020(b)(2) which states "*Except as permitted by use permit or miscellaneous plan permit, it is unlawful for fences, hedges, or other natural or structural objects, except trees, to exceed three feet in height within the required front yard.*" While an MPP does not require a public hearing, both applications shall be addressed through this review process.

Background

Previous Actions on the Site: No other planning permits have been reviewed for the site. The home was originally built in 1956.

According to the applicant, the existing fence was in place when they purchased the house in 1995. The applicant also noted that, according to their neighbor, the fence was in place when their neighbor purchased their house in 1979.

The fence is located in the required front yard and extends into Driveway Vision Triangle on both the subject site and the neighboring site (to the north).

The "Driveway vision triangle" is defined as the triangle area created by a line connecting points along the back edge of a public sidewalk and the outer edge of a driveway, which points are established ten feet distant from the intersection of the back edge of the sidewalk and the outer edge of the driveway. (SMC 19.12.050.D.12)

The unpermitted fence was identified on February 1, 2006 as part of the Neighborhood Enhancement Program in the northern section of the City. The program identified approximately 77 cases out of the 200 residential properties on Sandia, Socorro, Torrance, and Tucson Avenues. Of the 61 current (or 77 total, 16 are closed), 13 are fences.

Environmental Review

A Class 1 Categorical Exemption relieves this project from California Environmental Quality Act provisions. Class 1 Categorical Exemptions include modifications to existing structures.

Variance

Site Layout: The existing home is located near the center of the 5,775 square foot rectangular parcel. A fence surrounds the property at the property line. Along the front and right side yard, the fence is 5 foot 6 inches high with the first 3 feet of stone and the remaining 2 feet 6 inches of wrought iron. It is located along the front (east) and side yard (north) property lines.

A notable feature on the site is that the ground slopes approximately two feet upward from the top of curb to the front door and the front yard area contains up to two feet of fill to level the front yard. This results in a height differential on the front yard fence such that the first 3 feet of fence (when measured from the sidewalk) serves as a 2-foot retaining wall on the property side of the fence. Such that, from the applicant's front yard perspective, the front yard fence appears to be only 3 feet 6 inches high. Fence heights within front yards, reducible front yards, or any vision triangle are to be measured from the top of the nearest public curb (per SMC 19.48.020.3).

Parking/Circulation: The existing fence impacts the Driveway Vision Triangle for both the subject site and the neighbor's driveway located just north of the site. The top part of the fence is wrought iron with approximately 5.5 inches between the bars and allows for some degree of visibility. However, at certain angles, the bars block a driver's visibility of the sidewalk and/or roadway while backing into the street.

Landscaping: The Driveway Vision Triangle is also impacted by the existing landscaping. The Municipal Code also states that any tree, shrub or other

plant on private property which dangerously obstructs the view in the Vision Triangle is considered to be a public nuisance (SMC 13.16.100.h).

Compliance with Development Standards/Guidelines: The requested Variance would allow an exception to the Code requirements and design guideline of only allowing fences up to 3 feet in the required front yard.

The following Guidelines were considered in the project analysis:

Design Guideline	Comments
Single-Family Home Design Techniques. 3.11 Landscaping G – <i>Fencing along front property lines and along side property lines within front yard setback area should not exceed three feet in height. Open wood fencing is a preferred solution along front property lines.</i>	The fence does not meet the guideline requirements and runs counter to the current City Neighborhood Preservation program.

Design techniques provide guidelines, which differ from the more clearly defined Municipal Code requirements. In the non-Vision Triangle area, only small architectural features (such as decorative caps or posts) shall be allowed to exceed 3-feet. These requirements shall apply to both proposed and unpermitted existing fences.

Expected Impact on the Surroundings: While the fence has been in place for a long period of time, the structure is noted as decreasing visibility for drivers exiting the subject site and the neighboring site. This poses a hazard to both pedestrians and other vehicles and is why the Driveway Vision Triangle requirement was established.

Staff is also concerned that if a Variance is approved, a precedent would be set for other Variance requests in the neighborhood. This would undermine the City's current City program to bring the front yard fences into greater conformity with City design standards.

Public Contact

Notice of Public Hearing	Staff Report	Agenda
<ul style="list-style-type: none"> Published in the <i>Sun</i> newspaper Posted on the site 15 notices mailed to adjacent property owners and residents of the project site, including the neighborhood association 	<ul style="list-style-type: none"> Posted on the City of Sunnyvale's Website Provided at the Reference Section of the City of Sunnyvale's Public Library 	<ul style="list-style-type: none"> Posted on the City's official notice bulletin board City of Sunnyvale's Website Recorded for SunDial

Conclusion

Applicant's Justification: The applicant has addressed the three required findings for a Variance in Attachment C – Applicant's Letter of Justification. In summary, the applicant contends the following:

- The spacing of the wrought iron results in a minimal impact on the vision triangle.
- The vision triangles are clear.
- Other properties enjoy the benefit of tall front yard fences (namely, 1356 Socorro and 1065 Blazingwood).

The applicant submitted 4 examples of existing comparable fences in the area. The following table summarizes the fences noted.

Address	Fence type	Comments
1245 Socorro	4' 2" wrought iron	DR approved on 1/4/02 for the home, but no fence noted in plans.
1356 Socorro	4' wrought iron and stone	MPP for fence approved 1/23/04.
902 Fairwood	4' 2" wrought iron and stone	Not permitted.
1065 Blazingwood	6' 5" wrought iron	Use Permit approved on 08/29/83.

Discussion: There are two applications under review, the Variance for the fence above 3 feet located in the Driveway Vision Triangle, and the MPP the required front yard fence over 3-feet high.

Variance: Staff cannot make any of the three required findings. There is nothing unique about the site to give it special consideration based on the size or shape of the lot (Finding 1). While there is spacing between the wrought iron bars, there are angles from which the existing fencing does obstruct the line-of-sight of a driver existing two driveways that raise safety concerns and may be considered detrimental to the public welfare (Finding 2). And while two sites in the neighborhood have been approved to enjoy a front yard fence above 3 feet high, one was approved in 1983 and the recent approval for a 4-foot high fence in 2002 was considered on its own merits and is still significantly lower than the proposed 5-foot 6-inch fence. Further, the current City program to reduce the other unpermitted fences in the vicinity of the site to meet City guidelines clarifies that other property owners shall not be allowed to have taller fences, which would result in approval of this permit granting a special privilege (Finding 3).

The Municipal Code has been modified over time regarding fence requirements; however, even if the existing fence pre-dates the current requirements, fences

that did not have appropriate permits do not typically enjoy the same grandfathering clause that buildings and uses enjoy.

Miscellaneous Plan Permit: Staff is recommending denial of the MPP based on the concerns raised in the discussion of the Variance, and the concern for setting precedence that runs counter the City's current policies and Neighborhood Preservation program. Staff considers the retaining wall alone to be sufficient height to delineate the yard.

Findings: Staff is recommending denial for this application because the Findings (Attachment A) were not made. However, if the approving authority is able to make the required findings, staff is recommending the Conditions of Approval (Attachment B) for the project be attached to the approval.

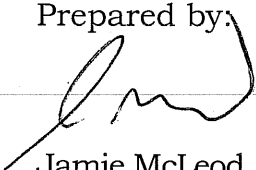
Alternatives

1. Deny requested Variance and Miscellaneous Plan Permit.
2. Approve the Variance and/or Miscellaneous Plan Permit with attached conditions.
3. Approve the Variance and/or Miscellaneous Plan Permit with modified conditions.

Recommendation

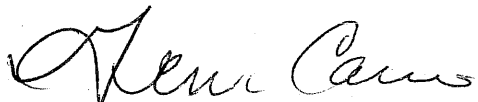
Alternative 1.

Prepared by:



Jamie McLeod
Project Planner

Reviewed by:



Gerri Caruso
Principal Planner

Attachments:

- A. Recommended Findings
 - B. Recommended Conditions of Approval
 - C. Applicant Letter of Justification
 - D. Site and Architectural Plans
 - E. Pictures of Site
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Recommended Findings - Variance

1. Because of exceptional or extraordinary circumstances or conditions applicable to the property, or use, including size, shape, topography, location or surroundings, the strict application of the ordinance is found to deprive the property owner or privileges enjoyed by other properties in the vicinity and within the same zoning district.

Staff is not able to make this finding because the site a regular shape and has no distinguishing topographical features. The applicant has not demonstrated that extraordinary circumstances apply to this site or that the use would deprive him of a privilege enjoyed by others. The Municipal Code does not allow staff to interpret the height of the fence based on the raised elevation of the soil in the front yard area, but only from the height of the adjacent curb.

2. The granting of the Variance will not be materially detrimental to the public welfare or injurious to the property, improvements, or uses within the immediate vicinity and within the same zoning district.

Staff is not able to make this finding because the fence somewhat obstructs the visibility of drivers exiting the site on both the subject property and the neighboring property, located north of the site.

3. Upon granting of the Variance, the intent and purpose of the ordinance will still be served and the recipient of the Variance will not be granted special privileges not enjoyed by other surrounding property owners within the same zoning district.

Staff is not able to make this finding because approving this request will grant the applicant a privilege not allowed to owners in the neighborhood, or set precedence to allow a significant majority of the homes in the neighborhood to make the same findings for front yard fences. This would run counter to City design guidelines.

Recommended Conditions of Approval if the Variance is Granted.

In addition to complying with all applicable City, County, State and Federal Statutes, Codes, Ordinances, Resolutions and Regulations, Permittee expressly accepts and agrees to comply with the following conditions of approval of this Permit:

Unless otherwise noted, all conditions shall be subject to the review of approval of the Director of Community Development.

1. GENERAL CONDITIONS

- A. Project shall be in conformance with the plans approved at the public hearing. Minor changes may be approved by the Director of Community Development; major changes may be approved at a public hearing.
 - B. The Conditions of Approval shall be reproduced on a page of the plans submitted for a Building permit for this project.
 - C. Obtain building permits for the proposed plan, including the retaining wall portion of the front yard stone fence.
 - D. Landscaping in the Vision Triangle shall be trimmed to minimize the impact on visibility.
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SUNNYVALE

VARIANCE JUSTIFICATIONS

Justifications must be submitted by the applicant with all Variance applications. Use this sheet or a separate sheet of paper to complete all of the three statements below.

In granting a Variance, all of the following justifications must be made by the Planning Commission or the Administrative Hearing Officer:

19.84.050. Findings.

(a) A Variance from the requirements of this title, except for the height of a ground sign, shall be approved only upon a showing by the applicant that:

1. Because of exceptional or extraordinary circumstances or conditions applicable to the property, or use, including size, shape, topography, location or surroundings, the strict application of the ordinance is found to deprive the property owner of privileges enjoyed by other properties in the vicinity and within the same zoning district.

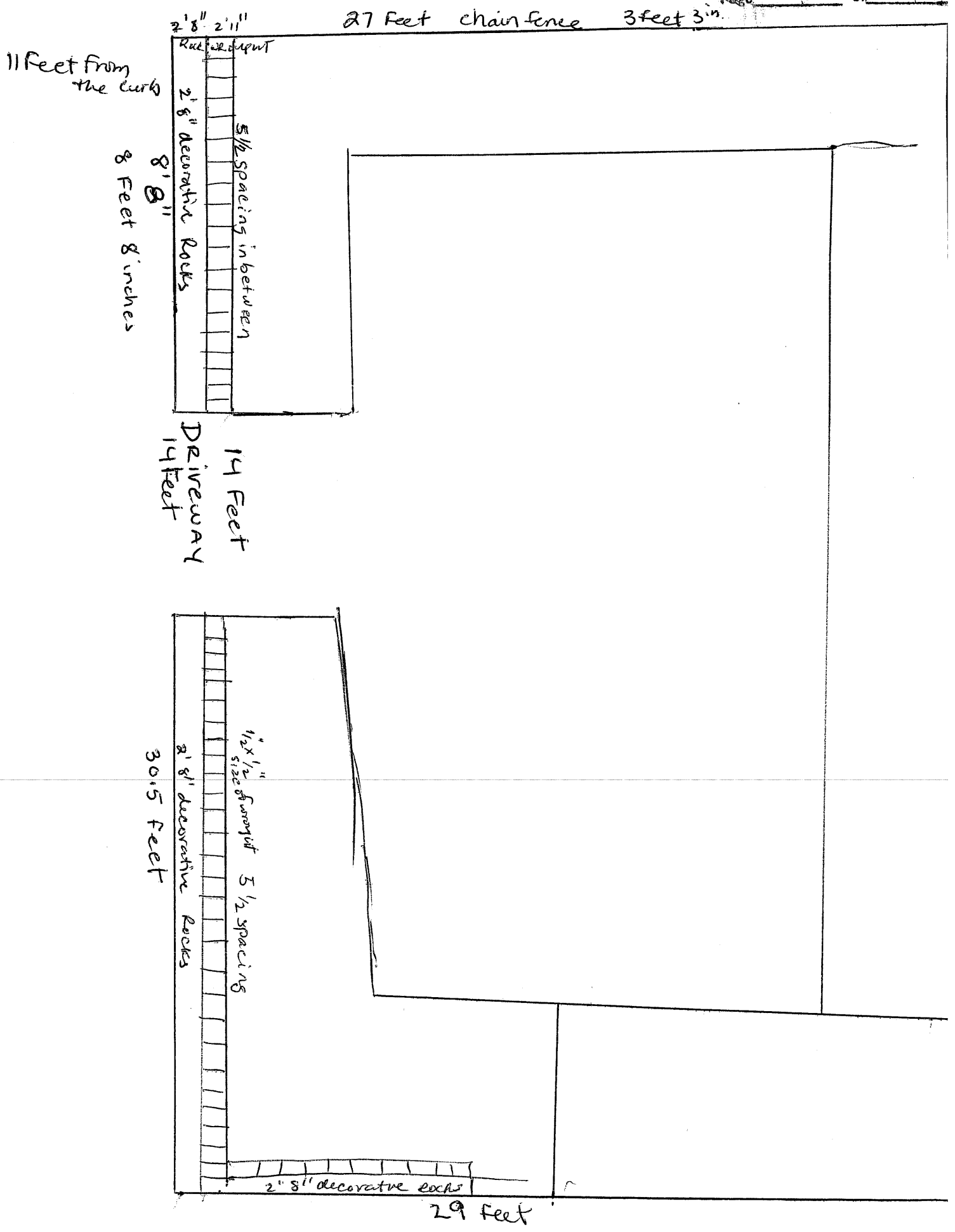
- ① Wrought iron spacing 5 1/2" apart creating No visual obstruction at all.
 - ② Wrought iron thickness is 1/2 x 1/2
 - ③ Corner visions are very clear. approval
 - ④ 1356 Scorio in Sunnyvale was granted 5 feet fence in Jan 2004 is enjoying. I'm also attaching pictures of the other property that have similar type of fence why grant is not approving when triangle vision is very clear. 1065 Blazingwood have 6' 5" fence.
2. The granting of the Variance will not be materially detrimental to the public welfare or injurious to the property, improvements or uses within the immediate vicinity and within the same zoning district.

Very clear visibility through wrought iron fence

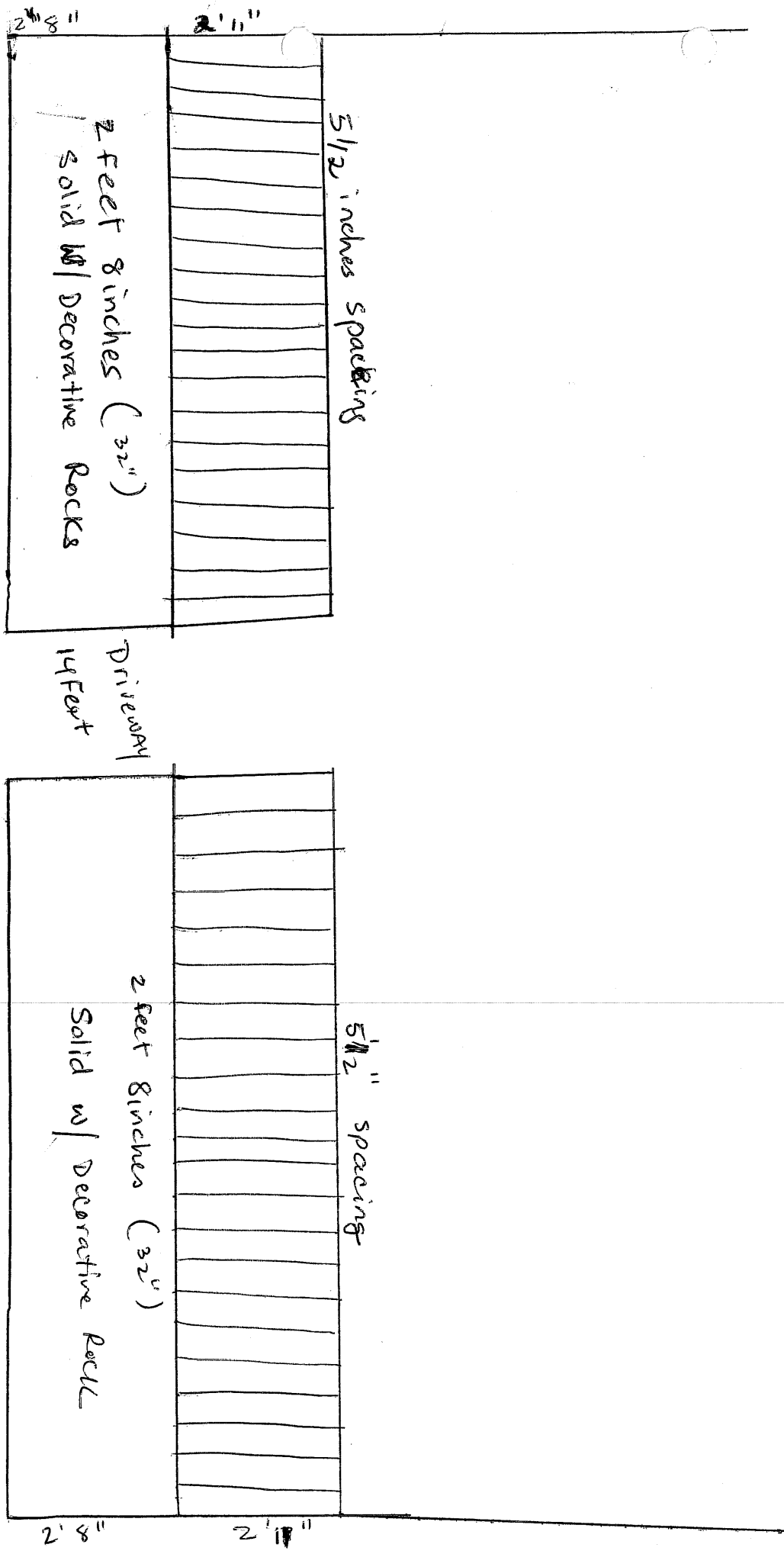
3. Upon granting of the Variance the intent and purpose of the ordinance will still be served and the recipient of the Variance will not be granted special privileges not enjoyed by other surrounding property owners within the same zoning district.

I see the houses have same design fence that wouldn't impact any visibility. why
All the vision triangles free of any obstruction for safety purpose.

If you need assistance in answering any of these justifications, contact the Planning Division staff at the One Stop Permit Center.

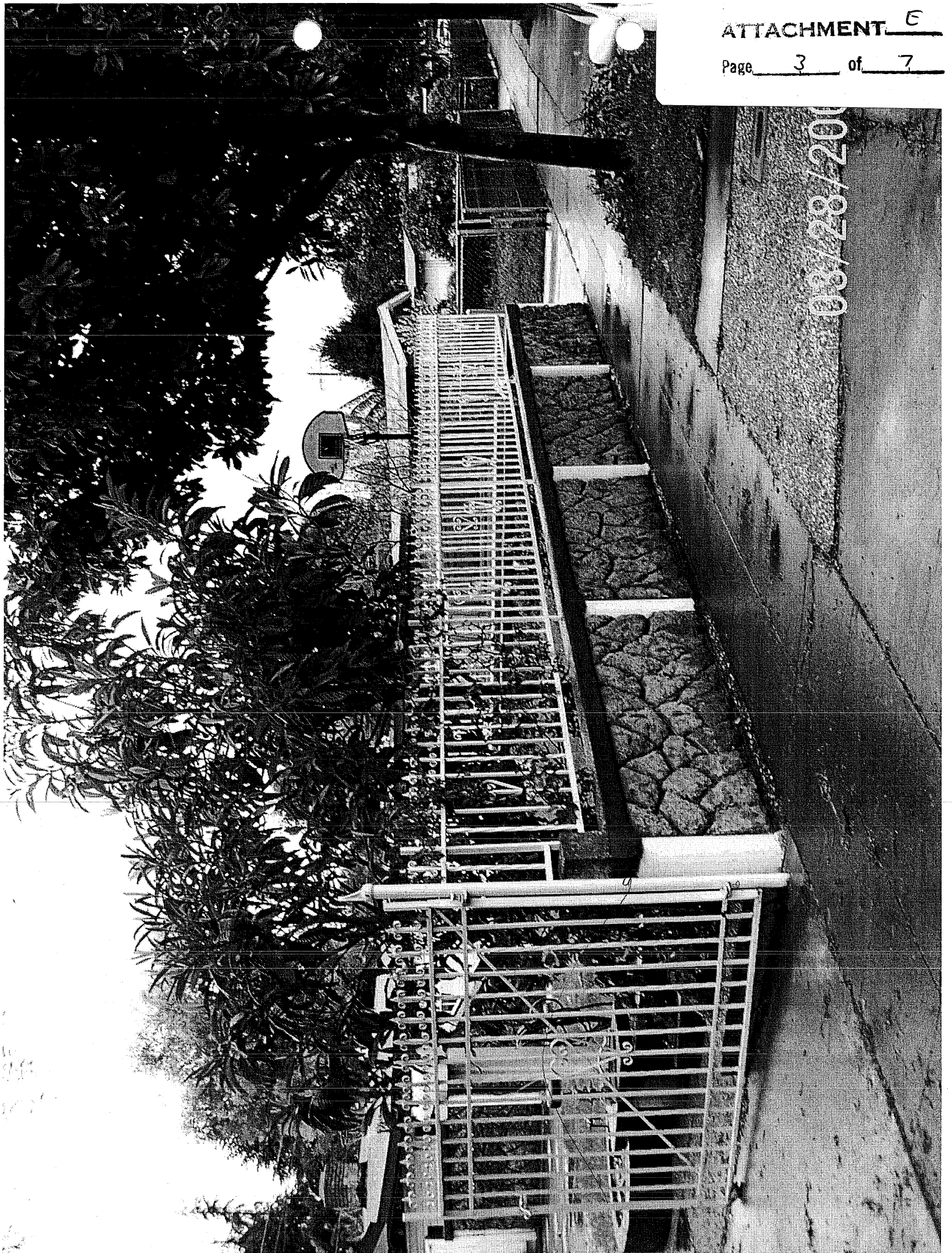


* wrought iron spaced 5 1/2" apart creating NO visual obstruction.
* wrought iron size 1/2" x 1/2"
* Fences visible from street maintained in very good condition.
* Fence is 11 feet from the curb
* Corner vision very clear









03/28/20





03/28/200



03/28/200

